# CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	✓ Force	Discourt	. 🔲 U.S.
Cassandra Fenkel		Team # 4	201309275	☐ Abuse	e 🔲 O.L.	✓ Injury
Incident Date(s) Location		Location of Incident:	n of Incident:		et: 18 Mo. SOL	EO SOL
Friday, 09/27/2013 9:10 PM		87(2)(b)		25	3/27/2015	3/27/2015
Date/Time CV Reported		CV Reported At:	How CV Reported:	Date/7	Γime Received at CC	RB
Fri, 09/27/2013 11:40 PM		IAB	Phone	Thu, 1	0/03/2013 3:39 PM	[
Complainant/Victim	Type	Home Add	ress			
Witness(es)		Home Add	ress			
Subject Officer(s)	Shield	TaxID	Command			
1. POM Gerard Staples	24526	953443	025 PCT			
2. POM Humberto Reyes	29730	953307	025 PCT			
3. Officers			025 PCT			
4. An officer			025 PCT			
Witness Officer(s)	Shield No	Tax No	Cmd Name			
1. POM Brendan Reilly	09343	952155	025 PCT			
2. POF Carina Herrera	23623	952846	025 PCT			
3. POF Jojaira Taveras	05437	952281	025 PCT			
4. POM Jerry Rivera	31633	953316	025 PCT			
5. POM Santiago Inoa	11409	951839	025 PCT			
6. POM Luis Portero	13174	952125	025 PCT			
7. POM Michael Lassen	16482	951899	025 PCT			
8. SGT Donald Cambridge	02950	917366	025 PCT			
9. CPT Zaheer Azeez	00000	905738	025 PCT			
10. POM Kevin Garcia	04502	951758	025 PCT			
11. POM Preno Morency	03904	952034	025 PCT			
12. POM Michael Wren	19866	953579	025 PCT			
Officer(s)	Allegatio	n		]	Investigator Reco	mmendation
A.POM Gerard Staples	Force: PC	Gerard Staples used	physical force against	§ 87(2) (b)		
B.POM Humberto Reyes	Force: PC	Force: PO Humberto Reyes used physical force against [8 87(2)]				
C. Officers	Force: Officers used physical force against § 87(2)(b)					
D. An officer	Force: Ar wall of § 8	officer hit § 87(2)(b) 7(2)(g) ir	against the ground Manhattan.	ınd and		

# Case Summary

This case was originally assigned to Investigator Andrew Guinan and was reassigned to Investigator Cassandra Fenkel on December 18, 2014, upon Investigator Guinan's departure from the agency.

On September 27, 2013, \$87(2)(b) filed the following complaint via telephone with the Internal Affairs Bureau, on behalf of her son, \$87(2)(b) did not witness the incident (encl. 5-11).
At approximately 09:11 p.m. on September 27, 2013, \$\frac{87(2)(0)}{2}\$ walked outside and sat on the front stairs of his \$\frac{87(2)(0)}{2}\$ apartment building, located at in Manhattan. In his initial CCRB phone statement, \$\frac{87(2)(0)}{2}\$ stated he observed officers repeatedly attempting to issue summonses to several males who were drinking alcohol in public in front of a building down the street from him (encl. 12). Upon sitting on his steps, \$\frac{87(2)(0)}{2}\$ noticed his friend, \$\frac{87(2)(0)}{2}\$ standing outside. \$\frac{87(2)(0)}{2}\$ shook hands with \$\frac{87(2)(0)}{2}\$ said "What's up?" and the two had no further conversation. \$\frac{87(2)(0)}{2}\$ continued to sit on his steps while he browsed the internet on his IPhone with his head down. Approximately fifteen to twenty minutes after he arrived outside, \$\frac{87(2)(0)}{2}\$ heard a voice ask, "Can I see your I.D.?" \$\frac{87(2)(0)}{2}\$ heard a voice ask, "Can I see your I.D.?" \$\frac{87(2)(0)}{2}\$ remained seated and asked PO Staples and PO Jerry Rivera standing across from him.  \$\frac{87(2)(0)}{2}\$ remained seated and asked PO Staples, "Why do you want to see my I.D.? What could I possibly be doing wrong that you want to see my I.D.?" PO Staples asked \$\frac{87(2)(0)}{2}\$ twice more to provide his identification, and \$\frac{87(2)(0)}{2}\$ continued to ask why. \$\frac{87(2)(0)}{2}\$ walked away from the scene as soon as PO Staples asked \$\frac{87(2)(0)}{2}\$ for his identification (encl. 13-20).
Without saying anything, \$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$\\$
An unidentified officer then allegedly lifted \$87(2)(b) s torso upwards while his stomach and legs remained flat on the ground. The officer then released the hood and gripped the back of \$87(2)(b) s head, pushing it back into the ground ( <b>Allegation D</b> ). After the impact, \$87(2)(b) placed his tongue against the back of his teeth, and felt his right front tooth was missing. Immediately after s face was pushed to the ground, the officer allegedly lifted him up into a standing position, and pushed his face forcefully into the wall of \$87(2)(b) s apartment building ( <b>subsumed within Allegation D</b> ). \$87(2)(b) was then placed into a police vehicle and transported to the 25 <sup>th</sup> precinct stationhouse (encl. 13-20). \$87(2)(b) was arrested with a top charge of obstructing governmental administration in the second degree, along with resisting arrest and disorderly conduct (encl. 39-41).

## Mediation, Civil, and Criminal Histories

- Due to the severity of \$87(2)(b) s injuries, this complaint was ineligible for mediation.
- A Notice of Claim Inquiry was submitted to the NYC Comptroller's Office. Neither nor \$87(2)(6) have filed a lawsuit against the city regarding this incident (encl. 124).
- On January 26, 2015, in a phone call with \$87(2)(b). \$87(2)(g)

  , it was revealed that \$87(2)(b) filed a Notice of Claim with federal court, seeking full compensatory and punitive damages (encl. 145).
- \$ 87(2)(c), \$ 87(2)(b); \$\$ 86(1)(3)(4); \$ 87(2)(c)

# **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint filed by §87(2)(b) (encl. 3).
- This is the first complaint in which §87(2)(b) is a victim and he has not filed any CCRB complaints (encl. 4).
- PO Staples has been a member of the NYPD for 2 years, and this is the first CCRB complaint against him (encl. 1).
- PO Reyes has been a member of the NYPD for 2 years, and this is the first CCRB complaint against him (encl. 2).

## **Witnesses Not Interviewed**

- Despite contact attempts to \$87(2)(b) the CCRB has been unable to establish contact with him (encl. 125-145).
- In his CCRB testimony, \$87(2)(b) identified his friend \$87(2)(b) as a witness to the incident. However, \$87(2)(b) did not provide \$87(2)(b) is last name, and did not have a phone number for him (encl. 21-27). In the absence of further information regarding \$87(2)(b) is identity, the CCRB was unable to conduct relevant database searches for contact information.
- The CCRB obtained an unsworn phone statement from §87(2)(b) on June 17, 2014 (encl. 31).

#### **Potential Issues**

The CCRB has been unable to obtain incident related video footage allegedly held by and \$87(2)(b) Between November 21, 2013 and January 13, 2015, eight calls have been placed to both \$87(2)(b) and \$87(2)(b) who have been unresponsive to the CCRB's requests for video footage. Additionally, two letters have been sent to both \$87(2)(b) and \$87(2)(b) and have not been returned to the CCRB by the U.S. Postal Service.

#### **NYPD Documents**

- **NYPD SPRINT:** The NYPD Sprint identified the responding officers as assigned to the 25<sup>th</sup> Precinct's Impact Response Team, specifically foot post 11. Additionally, the SPRINT identified that the Impact Response Team's captain, Zaheer Azeez, was prompted to respond to the location (encl. 115-116).
- **25**<sup>th</sup> **Precinct's Impact Roll Call:** The 25<sup>th</sup> Precinct's Impact roll call identified PO Gerard Staples as assigned to foot post 11. The roll call identified the following officers as assigned

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to adjacent posts in the area, PO Jerry Rivera, PO Jojaira Tavernas, PO Kevin Garcia, PO Preno Morency, PO Humberto Reyes, and PO Michael Wren, all of whom were interviewed by the CCRB. Additionally, the roll call identified Sgt. Donald Cambridge, PO Michael Lassen, PO Santiago Iona, and PO Luis Portero as assigned to the sergeant's van (the only van out). PO Brendan Reilly and PO Carina Herrera were identified as the lieutenant's operator (encl. 117-118).

### **Explanation of Subject Officer Identification**

In his CCRB testimony, \$37(2)(b) identified PO Staples by name, as the officer who grabbed and pulled him down the stairs and used force towards him (encl. 13-20). \$37(2)(b) described PO Staples as a white male standing 5'11" tall, with a medium build, dark haired with a patch of white towards the front of his head, and approximately twenty-five-years-old (encl. 13-20). Therefore, a force allegation is pled against PO Staples. Additionally, \$37(2)(b) alleged that after PO Staples pulled him down a set of stairs and tripped him (Allegation A), numerous unknown officers kicked him and punched him as he lay on the ground (Allegation B and C), and a single unknown officer smashed his face into the ground and into the wall of 149 East 118<sup>th</sup> Street (Allegation D). \$37(2)(b) was unable to provide specific descriptions for any of these officers.

A force allegation (**Allegation B**) has been pled against PO Reyes, as PO Reyes acknowledged interacting with \$87(2)(b) and acknowledged punching \$87(2)(b) in his CCRB testimony. (encl. 58-60).

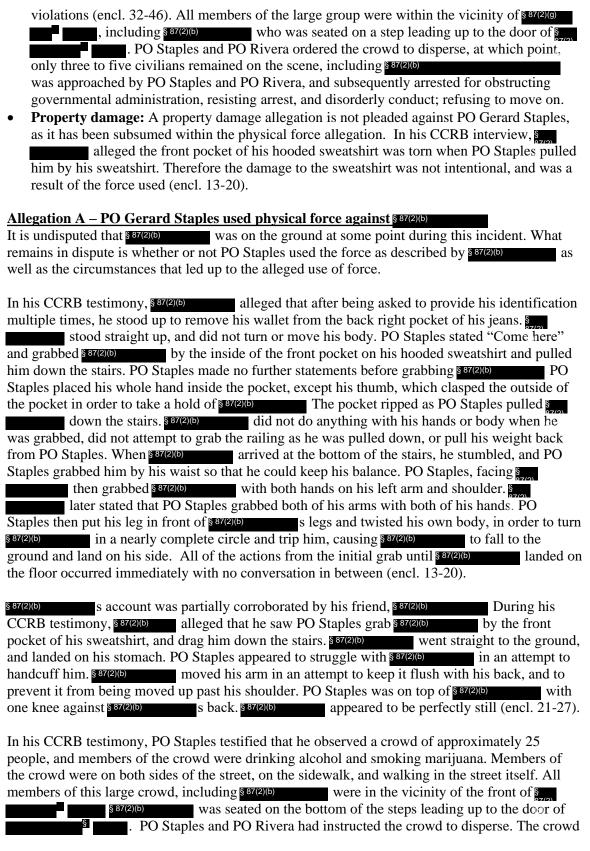
Over the course of the investigation, the CCRB interviewed a total of 14 officers who were identified via the roll call as assigned to posts adjacent to the incident, or vehicles which may have arrived at the scene. Out of the 14 officers interviewed, 7 of them (Sgt. Cambridge, PO Herrera, PO Reilly, PO Morency, PO Garcia, PO Lassen, and PO Wren) were not at the incident location and had no recollection of the incident. Of the remaining 7 officers, Capt. Azeez, PO Potero, PO Inoa and PO Taveras, acknowledged their presence at the incident location, denied engaging in the above allegations and denied seeing any other officer do so. PO Staples, PO Rivera, and PO Reyes provided the most detailed accounts of the incident. While PO Reyes acknowledged punching § 87(2)(b) (see Findings and Recommendations for Allegation B), alleged that numerous unidentified officers engaged in physical force including punching him and kicking him. § 37(2)(5) also alleged a single unidentified officer smashed his face into the ground and wall of . Aside from PO Reyes, no other officers admitted to engaging in the physical force as alleged by \$87(2)(b) and did not witness any other officer do so. Moreover, since 387(2)(5) could not provide physical descriptions of the officers because his hood was over his head and his face was covered by his hands and forearms, a photo array would not have been useful. In light of the above, these allegations have been pled against "Officers" and "an Officer" from the 25<sup>th</sup> Precinct (Allegation C, Allegation D).

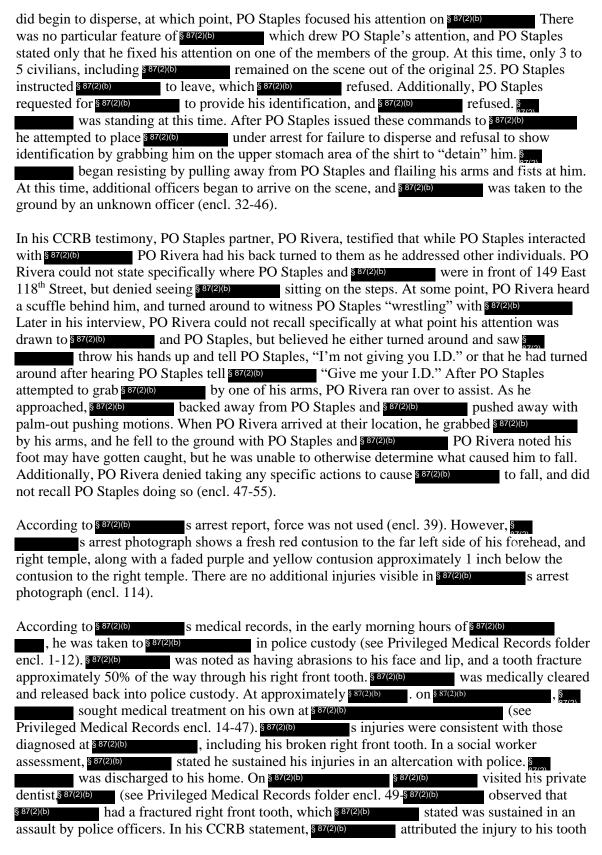
## **Findings and Recommendations**

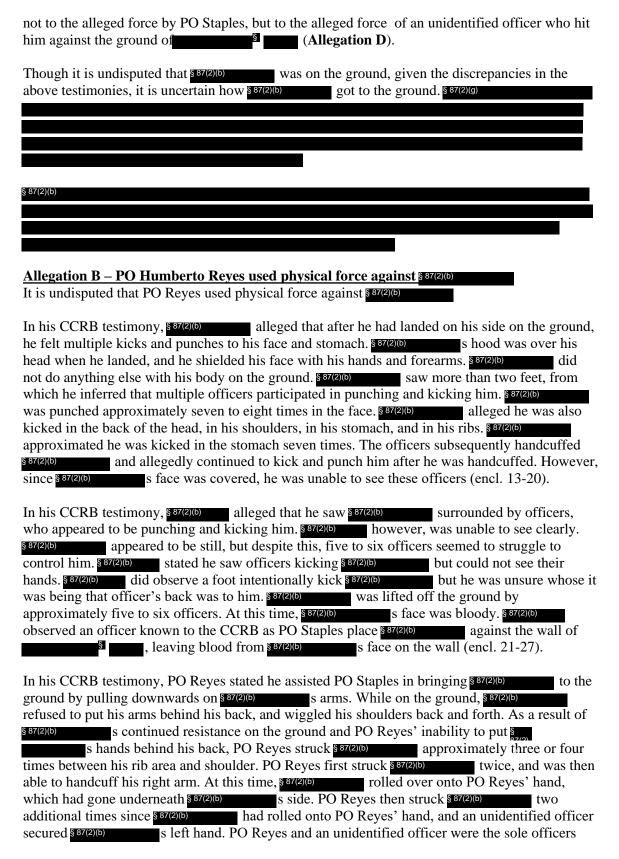
#### Allegations not pleaded

• Stop: A stop is not pleaded against PO Gerard Staples and PO Jerry Rivera. In his CCRB testimony, PO Staples articulated he observed a large group of approximately twenty-five people, some with open containers of alcohol, and some smoking cigarettes and marijuana. According to PO Staples' CCRB testimony, no summonses were issued in regards to these

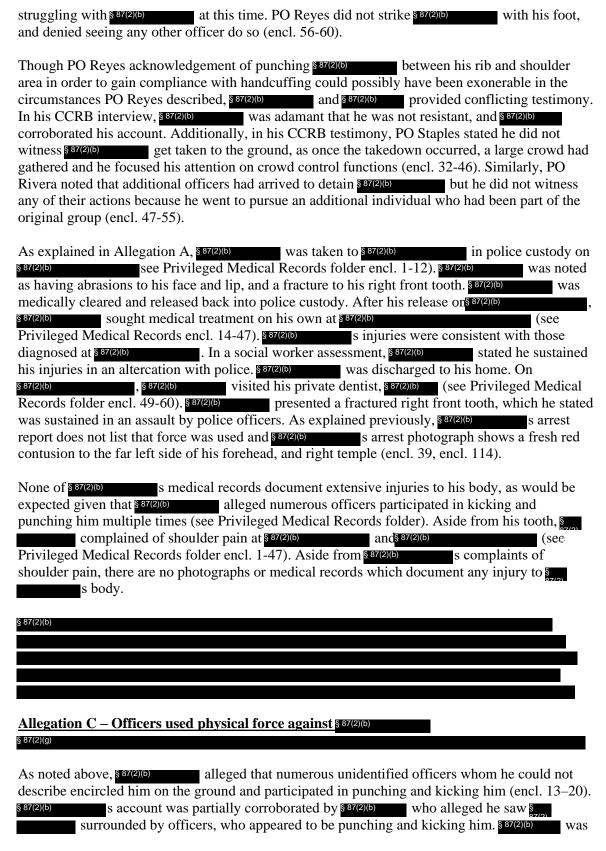
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provide physical descriptions (encl. 21–27). As expounded upon in Allegation A and Allegation B, \$37(2)(b) s medical records document abrasions to his face and lip, shoulder pain, and a tooth fracture (see Privileged Medical Records folder). § 37(2)(b) s arrest report does not list that force was used (encl. 39) s arrest photograph shows fresh contusions (encl. 114). Additionally, s mother, § 87(2)(b) provided a photograph of blood, allegedly from s mouth, located on the exterior wall of taken on the date of the incident (encl. 17). Investigator Guinan conducted fieldwork at November 14, 2013, and took photographs of the same bloody wall (encl. 29-30). None of s medical records document extensive injuries to his body, as would be expected given alleged numerous officers participated in kicking and punching him multiple times (see Privileged Medical Records folder). Aside from \$87(2)(5) shoulder pain, there are no photographs or medical records which document any injury to s body. Allegation D – An officer hit \$87(2)(6) against the ground and wall of 149 East 118<sup>th</sup> Street in Manhattan. In his CCRB testimony, § 87(2)(b) alleged that after he was punched and kicked on the ground by numerous unidentified officers, a single unidentified officer then lifted s head up off the ground by the back of his hood, bending § 87(2)(b) s head and torso upwards, while his stomach and legs remained flat on the ground. The officer then gripped the back of \$37(2)(b) s head, and pushed it back into the ground. \$37(2)(b) s face was toward the ground, and he was unable to see the officer who pushed him down. After the impact, placed his tongue against the back of his teeth, and felt his right front tooth was missing. Immediately after \$87(2)(b) s face was pushed into the ground, the unidentified officer lifted him off the ground into a standing position, and forcefully pushed his face into the (encl. 13-20). wall of In § 87(2)(6) CCRB testimony, after observing numerous officers punch and kick § he heard §87(2)(b) yell, "I think they knocked out my tooth, can you all look for it?" Additionally, \$87(2)(b) described that approximately one minute after the officers surrounded § 87(2)(b) five to six officers lifted him off the ground. § 87(2)(b) s face was bloody at this time, though \$87(2)(b) did not observe any injuries to \$87(2)(b) at this time. PO Staples placed § 87(2)(b) against the wall of , leaving blood from

unable to see clearly because these officers had their backs towards him, and was unable to

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incurred an

face on the wall where he stood. §87(2)(b) stated §87(2)(b)

injury to his tooth, though he was unsure how this occurred, however, \$87(2)(b)

informed \$87(2)(b) that officers see this because of the number of			
front tooth (see Privileged Medica he had visited \$87(2)(5) in 2007, be displaced, and loose after a basket	sonal dentist, \$87(2)(b) al Records folder). \$87(2) because one of his two thall injury. It was not	, consistently document his medical records all front teeth was slightly tw	Iso indicate that isted, s was §
§ 87(2)(b), § 87(2)(g)			
Team:			
Team			
Investigator:Signature	Print	Date	_
Supervisor:	Print	 Date	_
Reviewer:			
Title/Signature	Print	Date	
Reviewer:Title/Signature	Print	Date	<u></u>